

**SUBCHAPTER A : INDUSTRIAL SOLID WASTE AND  
MUNICIPAL HAZARDOUS WASTE IN GENERAL**

**§§335.1-335.31**

**Effective July 16, 1997**

**§335.1. Definitions.**

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly requires otherwise.

**Aboveground tank** - A device meeting the definition of tank in this section and that is situated in such a way that the entire surface area of the tank is completely above the plane of the adjacent surrounding surface and the entire surface area of the tank (including the tank bottom) is able to be visually inspected.

**Act** - The Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon Pamphlet 1992).

**Active life** - The period from the initial receipt of hazardous waste at the facility until the executive director receives certification of final closure.

**Active portion** - That portion of a facility where processing, storage, or disposal operations are being or have been conducted after November 19, 1980, and which is not a closed portion. (See also "closed portion" and "inactive portion.")

**Activities associated with the exploration, development, and protection of oil or gas or geothermal resources** - Activities associated with:

(A) the drilling of exploratory wells, oil wells, gas wells, or geothermal resource wells;

(B) the production of oil or gas or geothermal resources, including:

(i) activities associated with the drilling of injection water source wells that penetrate the base of usable quality water;

(ii) activities associated with the drilling of cathodic protection holes associated with the cathodic protection of wells and pipelines subject to the jurisdiction of the commission to regulate the production of oil or gas or geothermal resources;

(iii) activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants;

(iv) activities associated with any underground natural gas storage facility, provided the terms "natural gas" and "storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173;

(v) activities associated with any underground hydrocarbon storage facility, provided the terms "hydrocarbons" and "underground hydrocarbon storage facility" shall have the meanings set out in the Texas Natural Resources Code, §91.173; and

(vi) activities associated with the storage, handling, reclamation, gathering, transportation, or distribution of oil or gas prior to the refining of such oil or prior to the use of such gas in any manufacturing process or as a residential or industrial fuel;

(C) the operation, abandonment, and proper plugging of wells subject to the jurisdiction of the commission to regulate the exploration, development, and production of oil or gas or geothermal resources; and

(D) the discharge, storage, handling, transportation, reclamation, or disposal of waste or any other substance or material associated with any activity listed in subparagraphs (A)-(C) of this paragraph, except for waste generated in connection with activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants if that waste is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency (EPA) pursuant to the Federal Solid Waste Disposal Act, as amended (42 United States Code, §6901 et seq.).

**Administrator** - The administrator of the United States Environmental Protection Agency or his designee.

**Ancillary equipment** - Any device including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps, that is used to distribute, meter, or control the flow of hazardous waste from its point of generation to a storage or processing tank(s), between hazardous waste storage and processing tanks to a point of disposal on-site, or to a point of shipment for disposal off-site.

**Aquifer** - A geologic formation, group of formations, or part of a formation capable of yielding a significant amount of groundwater to wells or springs.

**Authorized representative** - The person responsible for the overall operation of a facility or an operation unit (i.e., part of a facility), e.g., the plant manager, superintendent, or person of equivalent responsibility.

**Battery** - A device consisting of one or more electrically connected electrochemical cells which is designed to receive, store, and deliver electric energy. An electrochemical cell is a system consisting of an anode, cathode, and an electrolyte, plus such connections (electrical and mechanical) as may be needed to allow the cell to deliver or receive electrical energy. The term battery also includes an intact, unbroken battery from which the electrolyte has been removed.

**Boiler** - An enclosed device using controlled flame combustion and having the following characteristics:

(A) the unit must have physical provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;

(B) the unit's combustion chamber and primary energy recovery section(s) must be of integral design. To be of integral design, the combustion chamber and the primary energy recovery section(s) (such as waterwalls and superheaters) must be physically formed into one manufactured or assembled unit. A unit in which the combustion chamber and the primary energy recovery section(s) are joined only by ducts or connections carrying flue gas is not integrally designed; however, secondary energy recovery equipment (such as economizers or air preheaters) need not be physically formed into the same unit as the combustion chamber and the primary energy recovery section. The following units are not precluded from being boilers solely because they are not of integral design: process heaters (units that transfer energy directly to a process stream), and fluidized bed combustion units; and

(C) while in operation, the unit must maintain a thermal energy recovery efficiency of at least 60%, calculated in terms of the recovered energy compared with the thermal value of the fuel; and

(D) the unit must export and utilize at least 75% of the recovered energy, calculated on an annual basis. In this calculation, no credit shall be given for recovered heat used internally in the same

unit. (Examples of internal use are the preheating of fuel or combustion air, and the driving of induced or forced draft fans or feedwater pumps); or

(E) the unit is one which the executive director has determined, on a case-by-case basis, to be a boiler, after considering the standards in §335.20 of this title (relating to Variance to be Classified as a Boiler).

**Carbon regeneration unit** - Any enclosed thermal treatment device used to regenerate spent activated carbon.

**Certification** - A statement of professional opinion based upon knowledge and belief.

**Class 1 wastes** - Any industrial solid waste or mixture of industrial solid wastes which because of its concentration, or physical or chemical characteristics, is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, or may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or disposed of or otherwise managed, as further defined in §335.505 (relating to Class 1 Waste Determination). Class 1 waste is also referred to throughout this chapter as Class I waste.

**Class 2 wastes** - Any individual solid waste or combination of industrial solid waste which cannot be described as Hazardous, Class 1 or Class 3 as defined in §335.506 (relating to Class 2 Waste Determination). Class 2 waste is also referred to throughout this chapter as Class II waste.

**Class 3 wastes** - Inert and essentially insoluble industrial solid waste, usually including, but not limited to, materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable, as further defined in §335.507 (relating to Class 3 Waste Determination). Class 3 waste is also referred to throughout this chapter as Class III waste.

**Closed portion** - That portion of a facility which an owner or operator has closed in accordance with the approved facility closure plan and all applicable closure requirements. (See also "active portion" and "inactive portion.")

**Closure** - The act of permanently taking a waste management unit or facility out of service.

**Commercial hazardous waste management facility** - Any hazardous waste management facility that accepts hazardous waste or PCBs for a charge, except a captured facility or a facility that accepts waste only from other facilities owned or effectively controlled by the same person, where "captured facility" means a manufacturing or production facility that generates an industrial solid waste or hazardous waste that is routinely stored, processed, or disposed of on a shared basis in an integrated waste management unit owned, operated by, and located within a contiguous manufacturing complex.

**Component** - Either the tank or ancillary equipment of a tank system.

**Confined aquifer** - An aquifer bounded above and below by impermeable beds or by beds of distinctly lower permeability than that of the aquifer itself; an aquifer containing confined groundwater.

**Consignee** - The ultimate treatment, storage, or disposal facility in a receiving country to which the hazardous waste will be sent.

**Container** - Any portable device in which a material is stored, transported, processed, or disposed of, or otherwise handled.

**Containment building** - A hazardous waste management unit that is used to store or treat hazardous waste under the provisions of §335.152(a)(19) or §335.112(a)(21) of this title.

**Contaminant** - Includes, but is not limited to, "solid waste," "hazardous waste," and "hazardous waste constituent" as defined in this subchapter, "pollutant" as defined in the Texas Water Code, §26.001, and Texas Health and Safety Code, §361.431, "hazardous substance" as defined in the Texas

Health and Safety Code, §361.003, and other substances that are subject to the Texas Hazardous Substances Spill Prevention and Control Act, Texas Water Code, §§26.261-26.268.

**Contaminated medium/media** - A portion or portions of the physical environment to include soil, sediment, surface water, ground water or air, that contain contaminants at levels that pose a substantial present or future threat to human health and the environment.

**Contingency plan** - A document setting out an organized, planned, and coordinated course of action to be followed in case of a fire, explosion, or release of hazardous waste or hazardous waste constituents which could threaten human health or the environment.

**Control** - To apply engineering measures such as capping or reversible treatment methods and/or institutional measures such as deed restrictions to facilities or areas with wastes or contaminated media which result in remedies that are protective of human health and the environment when combined with appropriate maintenance, monitoring, and any necessary further corrective action.

**Corrective action management unit (CAMU)** - An area within a facility that is designated by the commission under 40 Code of Federal Regulations Part 264, Subpart S, for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action). A CAMU shall only be used for the management of remediation wastes pursuant to implementing such corrective action requirements at the facility.

**Corrosion expert** - A person who, by reason of his knowledge of the physical sciences and the principles of engineering and mathematics, acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be certified as being qualified by the National Association of Corrosion Engineers (NACE) or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control on buried or submerged metal piping systems and metal tanks.

**Decontaminate** - To apply a treatment process(es) to wastes or contaminated media whereby the substantial present or future threat to human health and the environment is eliminated.

**Designated facility** - A Class I or hazardous waste storage, processing, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of 40 Code of Federal Regulations, Parts 270 and 124; a permit from a state authorized in accordance with 40 Code of Federal Regulations Part 271 (in the case of hazardous waste); a permit issued pursuant to §335.2 of this title (relating to Permit Required) (in the case of non-hazardous waste); or that is regulated under §335.24(f), (g), or (h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or §335.241 of this title (relating to Applicability and Requirements) and that has been designated on the manifest by the generator pursuant to §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste). If a waste is destined to a facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, then the designated facility must be a facility allowed by the receiving state to accept such waste.

**Destination facility** - A facility that treats, disposes, or recycles a particular category of universal waste, except those management activities described in 40 CFR 273.13(a) and (c) and 40 CFR 273.33(a) and (c) as adopted by reference in §335.261 of this title (relating to Universal Waste Rule). A

facility at which a particular category of universal waste is only accumulated is not a destination facility for purposes of managing that category of universal waste.

**Dike** - An embankment or ridge of either natural or man-made materials used to prevent the movement of liquids, sludges, solids, or other materials.

**Discharge or hazardous waste discharge** - The accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, or dumping of waste into or on any land or water.

**Disposal** - The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

**Disposal facility** - A facility or part of a facility at which solid waste is intentionally placed into or on any land or water, and at which waste will remain after closure. The term disposal facility does not include a corrective action management unit into which remediation wastes are placed.

**Drip pad** - An engineered structure consisting of a curbed, free-draining base, constructed of a non-earthen materials and designed to convey preservative kick-back or drippage from treated wood, precipitation, and surface water run-on to an associated collection system at wood preserving plants.

**Elementary neutralization unit** - A device which:

(A) is used for neutralizing wastes which are hazardous only because they exhibit the corrosivity characteristic defined in 40 Code of Federal Regulations §261.22, or are listed in 40 Code of Federal Regulations, Part 261, Subpart D only for this reason; and

(B) meets the definition of tank, tank system, container, transport vehicle, or vessel as defined in this section.

**Environmental Protection Agency acknowledgment of consent** - The cable sent to EPA from the United States Embassy in a receiving country that acknowledges the written consent of the receiving country to accept the hazardous waste and describes the terms and conditions of the receiving country's consent to the shipment.

**Environmental Protection Agency hazardous waste number** - The number assigned by the EPA to each hazardous waste listed in 40 Code of Federal Regulations, Part 261, Subpart D and to each characteristic identified in 40 Code of Federal Regulations, Part 261, Subpart C.

**Environmental Protection Agency identification number** - The number assigned by the EPA or the commission to each generator, transporter, and processing, storage, or disposal facility.

**Essentially insoluble** - Any material, which if representatively sampled and placed in static or dynamic contact with deionized water at ambient temperature for seven days, will not leach any quantity of any constituent of the material into the water in excess of current United States Public Health Service or EPA limits for drinking water as published in the Federal Register.

**Equivalent method** - Any testing or analytical method approved by the administrator under 40 Code of Federal Regulations §260.20 and §260.21.

**Existing portion** - That land surface area of an existing waste management unit, included in the original Part A permit application, on which wastes have been placed prior to the issuance of a permit.

**Existing tank system or existing component** - A tank system or component that is used for the storage or processing of hazardous waste and that is in operation, or for which installation has commenced on or prior to July 14, 1986. Installation will be considered to have commenced if the owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system and if either:

(A) a continuous on-site physical construction or installation program has begun; or  
(B) the owner or operator has entered into contractual obligations--which cannot be canceled or modified without substantial loss--for physical construction of the site or installation of the tank system to be completed within a reasonable time.

**Facility** - Includes:

(A) all contiguous land, and structures, other appurtenances, and improvements on the land, used for storing, processing, or disposing of municipal hazardous waste or industrial solid waste. A facility may consist of several storage, processing, or disposal operational units (e.g., one or more landfills, surface impoundments, or combinations of them;

(B) for the purpose of implementing corrective action under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units), all contiguous property under the control of the owner or operator seeking a permit for the storage, processing, and/or disposal of hazardous waste. This definition also applies to facilities implementing corrective action under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action).

**Final closure** - The closure of all hazardous waste management units at the facility in accordance with all applicable closure requirements so that hazardous waste management activities under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) are no longer conducted at the facility unless subject to the provisions in §335.69 of this title (relating to Accumulation Time).

**Food-chain crops** - Tobacco, crops grown for human consumption, and crops grown for feed for animals whose products are consumed by humans.

**Freeboard** - The vertical distance between the top of a tank or surface impoundment dike, and the surface of the waste contained therein.

**Free liquids** - Liquids which readily separate from the solid portion of a waste under ambient temperature and pressure.

**Generator** - Any person, by site, who produces municipal hazardous waste or industrial solid waste; any person who possesses municipal hazardous waste or industrial solid waste to be shipped to any other person; or any person whose act first causes the solid waste to become subject to regulation under this chapter. For the purposes of this regulation, a person who generates or possesses Class III wastes only shall not be considered a generator.

**Groundwater** - Water below the land surface in a zone of saturation.

**Hazardous industrial waste** - Any industrial solid waste or combination of industrial solid wastes identified or listed as a hazardous waste by the administrator of the EPA pursuant to the Resource Conservation and Recovery Act of 1976, §3001. The administrator has identified the characteristics of hazardous wastes and listed certain wastes as hazardous in 40 Code of Federal Regulations Part 261. The executive director will maintain in the offices of the commission a current list of hazardous wastes, a current set of characteristics of hazardous waste, and applicable appendices, as promulgated by the administrator.

**Hazardous substance** - Any substance designated as a hazardous substance under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 40 Code of Federal Regulations, Part 302.

**Hazardous waste** - Any solid waste identified or listed as a hazardous waste by the administrator of the EPA pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code 6901 et seq., as amended.

**Hazardous waste constituent** - A constituent that caused the administrator to list the hazardous waste in 40 Code of Federal Regulations Part 261, Subpart D or a constituent listed in Table 1 of 40 Code of Federal Regulations §261.24.

**Hazardous waste management facility** - All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.

**Hazardous waste management unit** - A landfill, surface impoundment, waste pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.

**In operation** - Refers to a facility which is processing, storing, or disposing of hazardous waste.

**Inactive portion** - That portion of a facility which is not operated after November 19, 1980. (See also "active portion" and "closed portion".)

**Incinerator** - Any enclosed device that:

- (A) uses controlled flame combustion and neither meets the criteria for classification as a boiler, sludge dryer, or carbon regeneration unit, nor is listed as an industrial furnace; or
- (B) meets the definition of infrared incinerator or plasma arc incinerator.

**Incompatible waste** - A hazardous waste which is unsuitable for:

- (A) placement in a particular device or facility because it may cause corrosion or decay of containment materials (e.g., container inner liners or tank walls); or
- (B) commingling with another waste or material under uncontrolled conditions because the commingling might produce heat or pressure, fire or explosion, violent reaction, toxic dusts, mists, fumes, or gases, or flammable fumes or gases.

**Individual generation site** - The contiguous site at or on which one or more hazardous wastes are generated. An individual generation site, such as a large manufacturing plant, may have one or more sources of hazardous waste but is considered a single or individual generation site if the site or property is contiguous.

**Industrial furnace** - Includes any of the following enclosed devices that use thermal treatment to accomplish recovery of materials or energy:

- (A) cement kilns;
- (B) lime kilns;
- (C) aggregate kilns;
- (D) phosphate kilns;
- (E) coke ovens;
- (F) blast furnaces;
- (G) smelting, melting, and refining furnaces (including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, and foundry furnaces);

- (H) titanium dioxide chloride process oxidation reactors;
- (I) methane reforming furnaces;
- (J) pulping liquor recovery furnaces;
- (K) combustion devices used in the recovery of sulfur values from spent sulfuric

acid;

(L) halogen acid furnaces (HAFs) for the production of acid from halogenated hazardous waste generated by chemical production facilities where the furnace is located on the site of a chemical production facility, the acid product has a halogen acid content of at least 3%, the acid product is used in a manufacturing process, and, except for hazardous waste burned as fuel, hazardous waste fed to the furnace has a minimum halogen content of 20% as generated; and

(M) other devices the commission may list, after the opportunity for notice and comment is afforded to the public.

**Industrial solid waste** - Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operation, which may include hazardous waste as defined in this section.

**Infrared incinerator** - Any enclosed device that uses electric powered resistance heaters as a source of radiant heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

**Inground tank** - A device meeting the definition of tank in this section whereby a portion of the tank wall is situated to any degree within the ground, thereby preventing visual inspection of that external surface area of the tank that is in the ground.

**Injection well** - A well into which fluids are injected. (See also "underground injection.")

**Inner liner** - A continuous layer of material placed inside a tank or container which protects the construction materials of the tank or container from the contained waste or reagents used to treat the waste.

**Installation inspector** - A person who, by reason of his knowledge of the physical sciences and the principles of engineering, acquired by a professional education and related practical experience, is qualified to supervise the installation of tank systems.

**International shipment** - The transportation of hazardous waste into or out of the jurisdiction of the United States.

**Land treatment facility** - A facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface and that is not a corrective action management unit; such facilities are disposal facilities if the waste will remain after closure.

**Landfill** - A disposal facility or part of a facility where hazardous waste is placed in or on land and which is not a pile, a land treatment facility, a surface impoundment, an injection well, a salt dome formation, a salt bed formation, an underground mine, a cave, or a corrective action management unit.

**Landfill cell** - A discrete volume of a hazardous waste landfill which uses a liner to provide isolation of wastes from adjacent cells or wastes. Examples of landfill cells are trenches and pits.

**Leachate** - Any liquid, including any suspended components in the liquid, that has percolated through or drained from hazardous waste.

**Leak-detection system** - A system capable of detecting the failure of either the primary or secondary containment structure or the presence of a release of hazardous waste or accumulated liquid in the secondary containment structure. Such a system must employ operational controls (e.g., daily visual inspections for releases into the secondary containment system of aboveground tanks) or consist of an



interstitial monitoring device designed to detect continuously and automatically the failure of the primary or secondary containment structure or the presence of a release of hazardous waste into the secondary containment structure.

**Liner** - A continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment, landfill, or landfill cell, which restricts the downward or lateral escape of hazardous waste, hazardous waste constituents, or leachate.

**Management or hazardous waste management** - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous waste.

**Manifest** - The uniform hazardous waste manifest form, Form TWC-0311, and, if necessary, TWC-0311B, furnished by the executive director to accompany shipments of municipal hazardous waste or Class I industrial solid waste.

**Manifest document number** - A number assigned to the manifest by the commission for reporting and recordkeeping purposes.

**Miscellaneous unit** - A hazardous waste management unit where hazardous waste is stored, processed, or disposed of and that is not a container, tank, surface impoundment, pile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under Chapter 331 of this title (relating to Underground Injection Control), corrective action management unit, containment building, or unit eligible for a research, development, and demonstration permit or under Chapter 305, Subchapter K of this title (relating to Research Development and Demonstration Permits).

**Movement** - That hazardous waste transported to a facility in an individual vehicle.

**Municipal hazardous waste** - A municipal solid waste or mixture of municipal solid wastes which has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

**Municipal solid waste** - Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities; including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial waste.

**New tank system or new tank component** - A tank system or component that will be used for the storage or processing of hazardous waste and for which installation has commenced after July 14, 1986; except, however, for purposes of 40 Code of Federal Regulations §264.193(g)(2) (incorporated by reference at §335.152(a)(8) of this title (relating to Standards)) and 40 Code of Federal Regulations §265.193(g)(2) (incorporated by reference at §335.112(a)(9) of this title (relating to Standards)), a new tank system is one for which construction commences after July 14, 1986 (see also existing tank system.”)

**Off-site** - Property which cannot be characterized as on-site.

**Onground tank** - A device meeting the definition of tank in this section and that is situated in such a way that the bottom of the tank is on the same level as the adjacent surrounding surface so that the external tank bottom cannot be visually inspected.

**On-site** - The same or geographically contiguous property which may be divided by public or private rights-of-way, provided the entrance and exit between the properties is at a cross-roads intersection, and access is by crossing, as opposed to going along, the right-of-way. Noncontiguous properties owned by the same person but connected by a right-of-way which he controls and to which the public does not have access, is also considered on-site property.

**Open burning** - The combustion of any material without the following characteristics:

(A) control of combustion air to maintain adequate temperature for efficient combustion;

(B) containment of the combustion-reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and

(C) control of emission of the gaseous combustion products. (See also "incineration" and "thermal treatment.")

**Operator** - The person responsible for the overall operation of a facility.

**Owner** - The person who owns a facility or part of a facility.

**Partial closure** - The closure of a hazardous waste management unit in accordance with the applicable closure requirements of Subchapters E and F of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities) at a facility that contains other active hazardous waste management units. For example, partial closure may include the closure of a tank (including its associated piping and underlying containment systems), landfill cell, surface impoundment, waste pile, or other hazardous waste management unit, while other units of the same facility continue to operate.

**PCBs or polychlorinated biphenyl compounds** - Compounds subject to Title 40, Code of Federal Regulations, Part 761.

**Permit** - A written permit issued by the commission which, by its conditions, may authorize the permittee to construct, install, modify or operate a specified municipal hazardous waste or industrial solid waste storage, processing, or disposal facility in accordance with specified limitations.

**Person** - Any individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association or any other legal entity.

**Personnel or facility personnel** - All persons who work at, or oversee the operations of, a hazardous waste facility, and whose actions or failure to act may result in noncompliance with the requirements of this chapter.

**Pesticide** - Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, other than any article that:

(A) is a new animal drug under Federal Food, Drug, and Cosmetic Act (FFDCA), §201(w), or

(B) is an animal drug that has been determined by regulation of the United States Secretary of Health and Human Services not to be a new animal drug, or

(C) is an animal feed under FFDCA, §201(x) that bears or contains any substances described by subparagraph (A) or (B) of this paragraph.

**Petroleum substance** - A crude oil or any refined or unrefined fraction or derivative of crude oil which is a liquid at standard conditions of temperature and pressure.

(A) Except as provided in subparagraph (C) of this section for the purposes of this chapter, a "petroleum substance" shall be limited to a substance in or a combination or mixture of substances within the following list (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere):

(i) basic petroleum substances - i.e., crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions;

(ii) motor fuels - a petroleum substance which is typically used for the operation of internal combustion engines and/or motors (which includes but is not limited to stationary engines and engines used in transportation vehicles and marine vessels);

(iii) aviation gasolines - i.e., Grade 80, Grade 100, and Grade 100-LL;

(iv) aviation jet fuels - i.e., Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8;

(v) distillate fuel oils - i.e., Number 1-D, Number 1, Number 2-D, and

Number 2;

(vi) residual fuel oils - i.e., Number 4-D, Number 4-light, Number 4,

Number 5-light, Number 5-heavy, and Number 6;

(vii) gas-turbine fuel oils - i.e., Grade O-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT, and Grade 4-GT;

(viii) illuminating oils - i.e., kerosene, mineral seal oil, long-time burning oils, 300 oil, and mineral colza oil;

(ix) lubricants - i.e., automotive and industrial lubricants;

(x) building materials - i.e., liquid asphalt and dust-laying oils;

(xi) insulating and waterproofing materials - i.e., transformer oils and cable oils;

(xii) used oils - (See definition for "used oil" in this section); and

(B) For the purposes of this chapter, a "petroleum substance" shall include solvents or a combination or mixture of solvents (except for any listed substance regulated as a hazardous waste under the federal Solid Waste Disposal Act, Subtitle C (42 United States Code §§6921, et seq.)) and which is liquid at standard conditions of temperature (20 degrees Centigrade) and pressure (1 atmosphere) -i.e., Stoddard solvent, petroleum spirits, mineral spirits, petroleum ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.

(C) The following materials are not considered petroleum substances:

(i) polymerized materials, i.e., plastics, synthetic rubber, polystyrene, high and low density polyethylene;

(ii) animal, microbial, and vegetable fats;

(iii) food grade oils;

(iv) hardened asphalt and solid asphaltic materials -i.e., roofing shingles, roofing felt, hot mix (and cold mix); and

(v) cosmetics.

**Pile** - Any noncontainerized accumulation of solid, nonflowing hazardous waste that is used for processing or storage, and that is not a corrective action management unit or a containment building.

**Plasma arc incinerator** - Any enclosed device using a high intensity electrical discharge or arc as a source of heat followed by an afterburner using controlled flame combustion and which is not listed as an industrial furnace.

**Primary exporter** - Any person who is required to originate the manifest for a shipment of hazardous waste in accordance with the regulations contained in 40 Code of Federal Regulations, Part 262, Subpart B, which are in effect as of November 8, 1986, or equivalent state provision, which specifies a treatment, storage, or disposal facility in a receiving country as the facility to which the hazardous waste will be sent and any intermediary arranging for the export.

**Processing** - The extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of hazardous waste, designed to change the physical, chemical, or biological character or

composition of any hazardous waste so as to neutralize such waste, or so as to recover energy or material from the waste or so as to render such waste nonhazardous, or less hazardous; safer to transport, store or dispose of; or amenable for recovery, amenable for storage, or reduced in volume. The transfer of solid waste for reuse or disposal as used in this definition does not include the actions of a transporter in conveying or transporting solid waste by truck, ship, pipeline, or other means. Unless the executive director determines that regulation of such activity is necessary to protect human health or the environment, the definition of processing does not include activities relating to those materials exempted by the administrator of the Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended.

**Publicly-owned treatment works (POTW)** - Any device or system used in the treatment (including recycling and reclamation) of municipal sewage or industrial wastes of a liquid nature which is owned by a state or municipality (as defined by the Clean Water Act, §502(4)). The definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment.

**Qualified groundwater scientist** - A scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering, and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by state registration, professional certifications, or completion of accredited university courses that enable that individual to make sound professional judgments regarding groundwater monitoring and contaminant fate and transport.

**Receiving country** - a foreign country to which a hazardous waste is sent for the purpose of treatment, storage, or disposal (except short-term storage incidental to transportation).

**Regional administrator** - The regional administrator for the Environmental Protection Agency region in which the facility is located, or his designee.

**Remediation** - The act of eliminating or reducing the concentration of contaminants in contaminated media.

**Remediation waste** - All solid and hazardous wastes, and all media (including groundwater, surface water, soils, and sediments) and debris, which contain listed hazardous wastes or which themselves exhibit a hazardous waste characteristic, that are managed for the purpose of implementing corrective action requirements under §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action). For a given facility, remediation wastes may originate only from within the facility boundary, but may include waste managed in implementing corrective action for releases beyond the facility boundary under the Texas Solid Waste Disposal Act, Texas Health and Safety Code Annotated (Vernon Pamphlet 1993), §361.303 (relating to Corrective Action), §335.166(5) of this title (relating to Corrective Action Program), or §335.167(c) of this title (relating to Corrective Action for Solid Waste Management Units).

**Remove** - To take waste, contaminated design or operating system components, or contaminated media away from a waste management unit, facility or area to another location for storage, processing, or disposal.

**Replacement unit** - A landfill, surface impoundment, or waste pile unit:

(A) from which all or substantially all the waste is removed; and

(B) that is subsequently reused to treat, store, or dispose of hazardous waste.

"Replacement unit" does not apply to a unit from which waste is removed during closure, if the subsequent reuse solely involves the disposal of waste from that unit and other closing units or corrective action areas at the facility, in accordance with an approved closure plan or EPA or state approved corrective action.

**Representative sample** - A sample of a universe or whole (e.g., waste pile, lagoon, groundwater) which can be expected to exhibit the average properties of the universe or whole.

**Run-off** - Any rainwater, leachate, or other liquid that drains over land from any part of a facility.

**Run-On** - Any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

**Saturated zone or zone of saturation** - That part of the earth's crust in which all voids are filled with water.

**Shipment** - Any action involving the conveyance of municipal hazardous waste or industrial solid waste by any means off-site.

**Sludge dryer** - Any enclosed thermal treatment device that is used to dehydrate sludge and that has a maximum total thermal input, excluding the heating value of the sludge itself, of 2,500 Btu/lb of sludge treated on a wet-weight basis.

**Small quantity generator** - A generator who generates less than 1,000 kg of hazardous waste in a calendar month.

**Solid Waste -**

(A) Any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations, and from community and institutional activities, but does not include:

(i) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued pursuant to the Texas Water Code, Chapter 26 (an exclusion applicable only to the actual point source discharge that does not exclude industrial wastewaters while they are being collected, stored or processed before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment);

(ii) uncontaminated soil, dirt, rock, sand and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements. The material serving as fill may also serve as a surface improvement such as a structure foundation, a road, soil erosion control, and flood protection. Man-made materials exempted under this provision shall only be deposited at sites where the construction is in progress or imminent such that rights to the land are secured and engineering, architectural, or other necessary planning have been initiated. Waste disposal shall be considered to have occurred on any land which has been filled with man-made inert materials under this provision if the land is sold, leased, or otherwise conveyed prior to the completion of construction of the surface improvement. Under such conditions, deed recordation shall be required. The deed recordation shall include the information required under §335.5(a) of this title (relating to Deed Recordation), prior to sale or other conveyance of the property;

(iii) waste materials which result from activities associated with the exploration, development, or production of oil or gas or geothermal resources, as those activities are defined in this section, and any other substance or material regulated by the Railroad Commission of Texas pursuant to the Natural Resources Code, §91.101, unless such waste, substance, or material results from activities associated with gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is a hazardous waste as defined by the administrator of the United States Environmental Protection Agency pursuant to the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 United States Code §6901 et seq., as amended; or

(iv) a material excluded by 40 Code of Federal Regulations §261.4(a)(1)-(11) or by variance granted under §335.18 of this title (relating to Variances from Classification as a Solid Waste) and §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste).

(B) A discarded material is any material which is:

- (i) abandoned, as explained in subparagraph (C) of this paragraph;
- (ii) recycled, as explained in subparagraph (D) of this paragraph; or
- (iii) considered inherently waste-like, as explained in subparagraph (E) of

this paragraph.

(C) Materials are solid wastes if they are abandoned by being:

- (i) disposed of;
- (ii) burned or incinerated; or
- (iii) accumulated, stored, or processed (but not recycled) before or in lieu

of being abandoned by being disposed of, burned, or incinerated.

(D) Materials are solid wastes if they are "recycled" or accumulated, stored, or processed before recycling as specified in this subparagraph. The chart referred to as Table 1 indicates only which materials are considered to be solid wastes when they are recycled and is not intended to supersede the definition of solid waste provided in subparagraph (A) of this paragraph.

(i) Used in a manner constituting disposal. Materials noted with an asterisk in Column 1 of Table 1 are solid wastes when they are:

(I) applied to or placed on the land in a manner that constitutes disposal; or

(II) used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land (in which cases the product itself remains a solid waste). However, commercial chemical products listed in 40 Code of Federal Regulations §261.33 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(ii) Burning for energy recovery. Materials noted with an asterisk in Column 2 of Table 1 are solid wastes when they are:

(I) burned to recover energy; or

(II) used to produce a fuel or are otherwise contained in fuels (in which cases the fuel itself remains a solid waste). However, commercial chemical products, which are listed in 40 Code of Federal Regulations §261.33, not listed in §261.33 but that exhibit one or more of the hazardous waste characteristics, or would be considered nonhazardous waste if disposed, are not solid wastes if they are fuels themselves and burned for energy recovery.

(iii) Reclaimed. Materials noted with an asterisk in Column 3 of Table 1 are solid wastes when reclaimed.

(iv) Accumulated speculatively. Materials noted with an asterisk in Column 4 of Table 1 are solid wastes when accumulated speculatively.

TABLE 1

	Use Constituting Disposal S.W. Def. (D)(i) (1)	Energy Recovery/Fuel S.W. Def. (D)(ii) (2)	Reclamation S.W. Def. (D)(iii) (3)	Speculative Accumulation S.W. Def. (D)(iv) (4)
Spent materials (listed hazardous & not listed characteristically hazardous)	*	*	*	*
Spent materials (nonhazardous) <sup>1</sup>	*	*	*	*
Sludges (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
Sludges (not listed characteristically hazardous)	*	*		*
Sludges (nonhazardous) <sup>1</sup>	*	*		*
By-products (listed hazardous in 40 CFR §261.31 or §261.32)	*	*	*	*
By-products (not listed characteristically hazardous)	*	*		*
By-products (nonhazardous) <sup>1</sup>	*	*		*
Commercial chemical products (listed, not listed characteristically hazardous, and nonhazardous)	*	*		
Scrap metal (hazardous)	*	*	*	*
Scrap metal (nonhazardous) <sup>1</sup>	*	*	*	*

NOTE: The terms "spent materials", "sludges", "by-products", and "scrap metal" are defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

<sup>1</sup>These materials are governed by the provisions of §335.24(h) only.

(E) Materials that are identified by the administrator of the EPA as inherently waste-like materials under 40 Code of Federal Regulations §261.2(d) are solid wastes when they are recycled in any manner.

(F) Materials are not solid wastes when they can be shown to be recycled by being:  
(i) used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed;

(ii) used or reused as effective substitutes for commercial products; or  
(iii) returned to the original process from which they were generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land.

(iv) secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(I) only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(II) reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(III) the secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(IV) the reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(G) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, as described in subparagraph (F) of this paragraph:

(i) materials used in a manner constituting disposal, or used to produce products that are applied to the land;

(ii) materials burned for energy recovery, used to produce a fuel, or contained in fuels;

(iii) materials accumulated speculatively; or

(iv) materials deemed to be inherently waste-like by the administrator of the Environmental Protection Agency, as described in 40 Code of Federal Regulations §261.2(d)(1) - §261.2(d)(2).

(H) Respondents in actions to enforce the industrial solid waste regulations who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation (such as contracts showing that a second person uses the material as an ingredient in a production process) to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so and that the recycling activity is legitimate and beneficial.

(I) Materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under 40 Code of Federal Regulations §261.3(c) unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

**Sorbent** - A material that is used to soak up free liquids by either adsorption or absorption, or both. Sorb means to either adsorb or absorb, or both.



**Spill** - The accidental spilling, leaking, pumping, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes into or on any land or water.

**Storage** - The holding of solid waste for a temporary period, at the end of which the waste is processed, disposed of, recycled or stored elsewhere.

**Sump** - Any pit or reservoir that meets the definition of tank in this section and those troughs/trenches connected to it that serve to collect hazardous waste for transport to hazardous waste storage, processing, or disposal facilities; except that as used in the landfill, surface impoundment, and waste pile rules, "sump" means any lined pit or reservoir that serves to collect liquids drained from a leachate collection and removal system or leak detection system for subsequent removal from the system.

**Surface impoundment or impoundment** - A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well or a corrective action management unit. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds, and lagoons.

**Tank** - A stationary device, designed to contain an accumulation of solid waste which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

**Tank system** - A hazardous waste storage or processing tank and its associated ancillary equipment and containment system.

**Thermal processing** - The processing of hazardous waste in a device which uses elevated temperatures as the primary means to change the chemical, physical, or biological character or composition of the hazardous waste. Examples of thermal processing are incineration, molten salt, pyrolysis, calcination, wet air oxidation, and microwave discharge. (See also "incinerator" and "open burning".)

**Thermostat** - A temperature control device that contains metallic mercury in an ampule attached to a bimetal sensing element, and mercury-containing ampules that have been removed from these temperature control devices in compliance with the requirements of 40 CFR 273.13(c)(2) or 273.33(c)(2) as adopted by reference in §335.261 of this title.

**Totally enclosed treatment facility** - A facility for the processing of hazardous waste which is directly connected to an industrial production process and which is constructed and operated in a manner which prevents the release of any hazardous waste or any constituent thereof into the environment during processing. An example is a pipe in which acid waste is neutralized.

**Transfer facility** - Any transportation-related facility including loading docks, parking areas, storage areas and other similar areas where shipments of hazardous waste are held during the normal course of transportation.

**Transit country** - Any foreign country, other than a receiving country, through which a hazardous waste is transported.

**Transport vehicle** - A motor vehicle or rail car used for the transportation of cargo by any mode. Each cargo-carrying body (trailer, railroad freight car, etc.) is a separate transport vehicle. Vessel includes every description of watercraft, used or capable of being used as a means of transportation on the water.

**Transporter** - Any person who conveys or transports municipal hazardous waste or industrial solid waste by truck, ship, pipeline, or other means.

**Treatability study** - A study in which a hazardous waste is subjected to a treatment process to determine:

- (A) whether the waste is amenable to the treatment process;
- (B) what pretreatment (if any) is required;
- (C) the optimal process conditions needed to achieve the desired treatment;
- (D) the efficiency of a treatment process for a specific waste or wastes; or
- (E) the characteristics and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of 40 Code of Federal Regulations §261.4(e) and (f) (§§335.2, 335.69, and 335.78 of this title (relating to Permit Required; Accumulation Time; and Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators)) exemptions are liner compatibility, corrosion, and other material compatibility studies and toxicological and health effects studies. A treatability study is not a means to commercially treat or dispose of hazardous waste.

**Treatment** - To apply a physical, biological or chemical process(es) to wastes and contaminated media which significantly reduces the toxicity, volume, or mobility of contaminants and which, depending on the process(es) used, achieves varying degrees of long-term effectiveness.

**Treatment zone** - A soil area of the unsaturated zone of a land treatment unit within which hazardous constituents are degraded, transferred, or immobilized.

**Underground injection** - The subsurface emplacement of fluids through a bored, drilled, or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension. (See also "injection well.")

**Underground tank** - A device meeting the definition of tank in this section whose entire surface area is totally below the surface of and covered by the ground.

**Unfit-for-use tank system** - A tank system that has been determined through an integrity assessment or other inspection to be no longer capable of storing or processing hazardous waste without posing a threat of release of hazardous waste to the environment.

**Universal waste** - Any of the following hazardous wastes that are managed under 40 CFR Part 273, the Universal Waste Rule, as adopted by reference in §335.261 of this title. The following wastes are exempt from regulation under Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) except as otherwise specified in §335.261 of this title:

- (A) Batteries as described in 40 CFR 273.2;
- (B) Pesticides as described in 40 CFR 273.3; and
- (C) Thermostats as described in 40 CFR 273.4.

**Universal waste handler** - A generator of universal waste; or the owner or operator of a facility, including all contiguous property, that receives universal waste from other universal waste handlers, accumulates universal waste, and sends universal waste to another universal waste handler, to a destination facility, or to a foreign destination. Universal waste handler does not mean a person who treats (except under the provisions of 40 CFR 273.13(a) or (c), or 273.33(a) or (c), as adopted by reference in §335.261 of this title), disposes, or recycles universal waste; or a person engaged in the off-site transportation of universal waste by air, rail, highway, or water, including a universal waste transfer facility.

**Universal waste transporter** - A person engaged in the off-site transportation of universal waste by air, rail, highway, or water.

**Unsaturated zone or zone of aeration** - The zone between the land surface and the water table.

**Uppermost aquifer** - The geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected within the facility's property boundary.

**Used oil** - Any oil that has been refined from crude oil, or any synthetic oil, that has been used, and, as a result of such use, is contaminated by physical or chemical impurities. Used oil fuel includes any fuel produced from used oil by processing, blending, or other treatment. Rules applicable to nonhazardous used oil, oil characteristically hazardous from use versus mixing, Conditionally Exempt Small Quantity Generator (CESQG) hazardous used oil, and household used oil after collection that will be recycled are found in 30 TAC Chapter 324 (relating to Used Oil) and 40 CFR Part 279 (relating to Standards for Management of Used Oil).

**Wastewater treatment unit** - A device which:

(A) is part of a wastewater treatment facility subject to regulation under either the Federal Water Pollution Control Act (Clean Water Act), 33 United States Code §466 et seq., §402 or §307(b), as amended;

(B) receives and processes or stores an influent wastewater which is a hazardous waste, or generates and accumulates a wastewater treatment sludge which is a hazardous waste, or processes or stores a wastewater treatment sludge which is a hazardous waste; and

(C) meets the definition of tank or tank system as defined in this section.

**Water (bulk shipment)** - The bulk transportation of municipal hazardous waste or Class I industrial solid waste which is loaded or carried on board a vessel without containers or labels.

**Well** - Any shaft or pit dug or bored into the earth, generally of a cylindrical form, and often walled with bricks or tubing to prevent the earth from caving in.

**Zone of engineering control** - An area under the control of the owner/operator that, upon detection of a hazardous waste release, can be readily cleaned up prior to the release of hazardous waste or hazardous constituents to groundwater or surface water.

Adopted June 25, 1997

Effective July 16, 1997

### **§335.2. Permit Required.**

(a) Except with regard to storage, processing, or disposal to which subsections (c)-(h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the TNRCC or its predecessor agencies, the Texas Department of Health, or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or

disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the Texas Natural Resource Conservation Commission (commission) approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities which satisfied this requirement by filing an application on or before November 19, 1980, with the United States Environmental Protection Agency are not required to submit a separate application with the Texas Department of Health. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361 (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act of 1976, as amended, 42 United States Code, §§6901 et seq., that render the facility subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the United States Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, as amended, which first require them to comply with the standards set forth in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards set forth in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the United States Environmental Protection Agency by March 24, 1987, as required by 40 Code of Federal Regulations, §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for the storage, processing, or disposal of industrial solid waste which is not hazardous industrial waste, if the waste is disposed of on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person. Any person who intends to conduct such activity under this subsection shall comply with the notification requirements of §335.6 of this title (relating to Notification Requirements).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who is a conditionally exempt small quantity generator as described in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b)-(d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 Code of Federal Regulations §261.4(c) and (d).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste which is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements set out at 40 Code of Federal Regulations §261.4(e) and (f), as amended and adopted in the Code of Federal Regulations through February 18, 1994, at 59 FedReg 8362, which are adopted herein by reference.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill which has qualified for interim status pursuant to 40 Code of Federal Regulations, Part 270, Subpart G, and which has complied with the standards set forth in Subpart E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities), by complying with the notification and information requirements as set forth in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of Title 40, Code of Federal Regulations, §265.301(a). In accordance with §335.6 of this title (relating to Notification Requirement), such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) PCB wastes subject to regulation by 40 Code of Federal Regulations, Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which would require a license from the Texas Department of Health or Texas Water Commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.136 (b) (6) (B)-(E) of this title (relating to Disposal of Special Wastes).

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 Code of Federal Regulations, §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal as provided under 40 Code of Federal Regulations, §270.1(c)(5) and (6). If a post-closure permit is required, the permit must address applicable provisions of 40 Code of Federal Regulations, Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) provisions relating to Groundwater Monitoring, Unsaturated Zone Monitoring, Corrective Action, and Post-closure Care Requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for Texas Water Commission's (commission) Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the Environmental Protection Agency (EPA) imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

Adopted October 23, 1996

Effective November 20, 1996

### **§335.3. Technical Guidelines.**

In order to promote the proper collection, handling, storage, processing, and disposal of industrial solid waste or municipal hazardous waste in a manner consistent with the purposes of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the executive director will make available on request,

copies of technical guidelines outlining methods designed to aid in the prevention of the conditions prohibited in this chapter. Guidelines should be considered as suggestions only.

**§335.4. General Prohibitions.**

In addition to the requirements of §335.2 of this title (relating to Permit Required), no person may cause, suffer, allow, or permit the collection, handling, storage, processing, or disposal of industrial solid waste or municipal hazardous waste in such a manner so as to cause:

- (1) the discharge or imminent threat of discharge of industrial solid waste or municipal hazardous waste into or adjacent to the waters in the state without obtaining specific authorization for such a discharge from the Texas Water Commission;
- (2) the creation and maintenance of a nuisance; or
- (3) the endangerment of the public health and welfare.

**§335.5. Deed Recordation of Waste Disposal.**

(a) Deed recordation of disposal of industrial solid waste or municipal hazardous waste. No person may cause, suffer, allow, or permit the disposal of industrial solid waste or municipal hazardous waste in a landfill prior to recording in the county deed records of the county or counties in which the disposal takes place, the following information:

- (1) a metes and bounds description of the portion or portions of the tract of land on which disposal of industrial solid waste or municipal hazardous waste will take place;
- (2) the class or classes of industrial solid wastes or municipal hazardous wastes to be disposed of and waste description; and
- (3) the name or permanent address of the person or persons operating the facility where more specific information on the disposal activity can be obtained.

(b) Proof of recordation. Proof of recordation shall be provided to the executive director in writing prior to instituting disposal operations.

(c) Additional requirements. Owners of property on which facilities for disposal of hazardous waste are located are subject to further requirements adopted by reference in §335.112(a)(6) of this title (relating to Standards).

**§335.6. Notification Requirements.**

(a) A person who intends to store, process, or dispose of industrial solid waste without a permit, as authorized by §335.2 (d), (e), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the

executive director in writing that storage, processing, or disposal activities are planned, at least 90 days prior to engaging in such activities. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such storage, processing, or disposal is compliant with the terms of this chapter. Such information may include, but is not limited to, information concerning waste composition, waste management methods, facility engineering plans and specifications, or the geology where the facility is located. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(b) Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall have the continuing obligation to immediately provide written notice to the executive director of any changes or additional information concerning waste composition, waste management methods, facility engineering plans and specifications, and the geology where the facility is located, to that reported in subsection (a) of this section, authorized in any permit, or stated in any application filed with the commission. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(c) Any person who generates hazardous waste in a quantity greater than the limits specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) in a calendar month or greater than 100 kilograms in a calendar month of industrial non-hazardous Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director. Such person shall also submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the storage, processing, or disposal is compliant with the terms of this chapter. Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title (relating to Permit Required), or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste). Any person who provides notification pursuant to this subsection shall have the continuing obligation to immediately document any changes or additional information with respect to such notification and within 90 days of the occurrence of such change or of becoming aware of such additional information, provide written notice to the executive director of any such changes or additional information to that reported previously. If waste is recycled on-site or managed pursuant to §335.2(d) of this title (relating to Permit Required), the generator must also comply with the notification requirements specified in subsection (h) of this section. The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

- (1) a description of the waste;
- (2) a description of the process generating the waste;
- (3) the composition of the waste;



(4) a proper hazardous waste determination which includes the appropriate EPA hazardous waste number(s) described in 40 Code of Federal Regulations Part 261. Generators must determine whether such waste is hazardous as defined in 40 Code of Federal Regulations Part 261 and submit the results of that hazardous waste determination to the executive director;

(5) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including the following information:

(A) whether the waste is managed on-site and/or off-site;

(B) a description of the type and use of each on-site waste management facility unit;

(C) a listing of the wastes managed in each unit;

(D) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title (relating to Permit Required).

(d) Any person who transports hazardous waste or Class 1 waste shall notify the executive director of such activity on forms furnished or approved by the executive director, except:

(1) industrial generators that generate less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) and who only transport their own waste; and

(2) municipal generators that generate less than the quantity limits of hazardous waste specified in §335.78 and who only transport their own waste;

(e) Persons operating transfer facilities in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity.

(f) Upon written request of the executive director, any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste, as defined in this subchapter, shall perform a chemical analysis of the solid waste and provide results of the analysis to the executive director.

(g) A person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity of facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

(h) Any person who conducts or intends to conduct the recycling of industrial solid waste or municipal hazardous waste as defined in §335.24 of this title (relating to Requirements for Recyclable

Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) or Subchapter H of this chapter must submit in writing to the executive director, at a minimum, the following information: the type(s) of industrial solid waste or municipal hazardous waste to be recycled, the method of storage prior to recycling, and the nature of the recycling activity. New recycling activities require such notification a minimum of 90 days prior to engaging in such activities. Persons engaged in recycling of industrial solid waste or municipal hazardous waste prior to the effective date of this section shall submit such notification within 60 days of the effective date of this subsection.

(i) The owner or operator of a facility qualifying for the small quantity burner exemption under 40 Code of Federal Regulations (CFR) §266.108 must provide a one-time signed, written notification to the United States Environmental Protection Agency and to the executive director indicating the following:

(1) The combustion unit is operating as a small quantity burner of hazardous waste;

(2) The owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) The maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), CESQG hazardous used oil, and household used oil after collection that will be recycled are found in Chapter 324 (relating to Used Oil).

Adopted March 6, 1996

Effective March 6, 1996

#### **§335.7. Bond or Other Financial Assurance Required.**

Authority to store, process, or dispose of industrial solid waste or municipal hazardous waste pursuant to a permit issued by the commission is contingent upon the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director, in an amount specified in the permit, which provides for the closing of the solid waste storage, processing, or disposal facility in accordance with the permit issued for the facility and all other rules of the commission. The commission may require the execution and maintenance of a surety bond or other financial assurance acceptable to the executive director for the closing of any solid waste facility exempt from the requirement of a permit under this chapter but subject to the requirement of a permit under the Texas Water Code, Chapter 26. Persons storing, processing or disposing of hazardous waste are subject to further requirements concerning financial assurance and closure and post-closure contained in Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing or Disposal Facilities).

#### **§335.8. Closure.**

(a) Applicability. The regulations in this section are effective on June 28, 1993. The regulations in this section apply to persons who undertake the closure of facilities used for the storage, processing, or disposal of industrial solid waste or municipal hazardous waste. The regulations in this section also apply to persons who undertake the remediation of contaminated media resulting from unauthorized discharges from such facilities, either as part of closure or at any time before or after closure. The regulations in this section also apply to persons who undertake remediation of areas that are not otherwise designated as a facility but that contain unauthorized discharges of industrial solid waste or municipal hazardous waste. The regulations of this subsection, in addition to other applicable rules, permits or orders, establish the obligation for persons to perform closures or remediations for facilities or areas containing industrial solid and municipal hazardous waste and further specify the mechanism to evaluate such closures or remediations. The obligation to perform remediations for unauthorized discharges of contaminants under the state superfund and spill response programs occurs through the application of the commission's rules and statutes pertaining to those programs; however, once such obligation has occurred the regulations in this section will be used to specify the mechanism to evaluate remediation of unauthorized discharges of contaminants subject to those programs. The regulations in this section supplement but do not replace any requirements for closure or remediation specified in the regulations for the programs subject to these rules and shall apply as specified in paragraphs (1)-(6) of this subsection.

(1) Persons shall complete notification and response actions for spills in accordance with the Texas Water Code, §26.039 and §26.261 and the administrative and procedural requirements of the commission to carry out the Texas Hazardous Substance Spill Prevention and Control Act. This section applies to spills when the response actions do not result in remediation within the timeframes specified by the commission's spill response program. In such circumstances the person shall submit a plan in accordance with subsection (b) of this section.

(2) This section applies to remediations performed under the state superfund program in accordance with Subchapter K of this chapter (relating to Hazardous Substance Facilities Assessment and Remediation) with the exception that information, including a baseline risk assessment, shall be provided and potential remedies shall be evaluated in response to Subchapter K rather than the requirements of subsections (c) and (d) of this section and §335.553 of this title (relating to Required Information) and §335.562 (relating to Remedy Evaluation Factors for Risk Reduction Standard Number 3). Also, under the state superfund program, persons shall determine media cleanup levels assuming future residential land use unless the person demonstrates to the satisfaction of the executive director using the provisions of §335.563(e) of this title (relating to Media Cleanup Requirements for Risk Reduction Standard Number 3) that an alternative land use is more appropriate.

(3) Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste at a facility permitted under §335.2(a) of this title (relating to Permit required), shall, unless specifically modified by other order of the commission, close the facility in accordance with the closing provisions of the permit.

(4) Any person who stores, processes, or disposes of hazardous waste is also subject to the applicable provisions relating to closure and post-closure in Subchapters E and F of this chapter (relating to Interim Standards for Hazardous Waste Storage, Processing, or Disposal Facilities; and Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities, respectively).

(5) Persons who have received approval of closure or remediation plans by the executive director and have either completed or not completed the action prior to the effective date of this section may either maintain or complete the action, as applicable, according to the approved plan and are not subject to the requirements of this section unless a substantial change in circumstances develops at the facility or area which results in an unacceptable threat to human health or the environment as described in subsection (b)(5) of this section. Plans or reports submitted but not approved prior to the effective date of this section will be reviewed according to the regulations in effect at the time of document submittal. If the executive director denies approval of the plan or report under those regulations for reasons of technical inadequacy, the person must then comply with the requirements of this section upon receipt of written notice from the executive director that the plan or report is not approved. Closure plans approved as part of an industrial solid or municipal hazardous waste permit which was issued prior to the effective date of this section but not implemented at the time of permit renewal are subject to review for compliance with this section as part of the permit renewal process. Persons may resubmit such plans or reports that they have revised voluntarily to conform with the requirements of this section, unless such resubmittal would result in noncompliance with a previously approved or imposed schedule of compliance.

(6) The requirements of this section do not apply to substances discharged or spilled from storage tanks regulated by Chapter 334 of this title (relating to Underground and Aboveground Storage Tanks).

(b) Closure and remediation obligations. Persons identified in subsection (a) of this section have the obligation to conduct the activities described in paragraphs (1)-(4) of this subsection when performing a closure or remediation. Upon receipt of approval by the executive director of reports demonstrating compliance with all applicable requirements, the person has completed these obligations unless a substantial change in circumstances results in an unacceptable risk to human health or the environment as described in paragraph (5) of this subsection.

(1) Notify the executive director in writing of any closure or remediation activities as is further specified in subsection (c) of this section;

(2) Perform closure or remediation activities at the facility or area of unauthorized discharge which meet one or more of the risk reduction standards specified in subparagraphs (A)-(C) of this paragraph. Unless the requirement to close a waste management facility is specified by other rule, permit or order, the person will determine the time for initiation of closure. The timely remediation of unauthorized discharges resulting from operation of a waste management unit does not compel the closure of the unit unless closure is a necessary part of the remedy to achieve protection of human health and the environment.

(A) Risk Reduction Standard Number 1: Closure/remediation to background - to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to background levels unaffected by waste management or industrial activities as further specified in §335.554 of this title (relating to Attainment of Risk Reduction Standard Number 1); or

(B) Risk Reduction Standard Number 2: Closure/remediation to health-based standards and criteria - to remove and/or decontaminate all waste, waste residues, leachate, and contaminated media to standards and criteria such that any substantial present or future threat to human health or the

environment is eliminated as further specified in §335.555 of this title (relating to Attainment of Risk Reduction Standard Number 2); or

(C) Risk Reduction Standard Number 3: Closure/remediation with controls - to remove, decontaminate and/or control all waste, waste residues, leachate, and contaminated media to levels and in a manner such that any substantial present or future threat to human health or the environment is eliminated or reduced to the maximum extent practicable, as further specified in §335.561 of this title (relating to Attainment of Risk Reduction Standard Number 3).

(3) Demonstrate in writing to the executive director that closure or remediation has been completed as is further specified in subsection (d) of this section;

(4) Perform any necessary post-closure care and deed certification or recordation activities as required by Subchapter S of this chapter (relating to Risk Reduction Standards) of this chapter; and

(5) Respond on a continuing basis pursuant to paragraphs (1)-(4) of this subsection in the event that a substantial change in circumstances at the facility or area results in an unacceptable threat to human health or the environment. In response to these substantial changes in circumstances, the person shall comply with this subsection utilizing the then-prevailing criteria and perform such actions as necessary to provide protection of human health and the environment. A substantial change in circumstance can include but is not limited to the situations described in subparagraphs (A)-(D) of this paragraph:

(A) a failure of institutional or engineering controls to prevent or mitigate exposure at the approved performance level;

(B) a change in land use from non-residential to residential; or

(C) an actual exposure condition is determined to be occurring at levels not protective of human health or the environment. For purposes of this subparagraph, changes made to Subchapter S of this chapter (relating to Risk Reduction Standards) in response to periodic reviews of the general procedures specified to generate numeric cleanup levels, or in response to annual revisions of Appendix II of Subchapter S to reflect new toxicity data, do not constitute a substantial change in circumstances, unless these changes are of such magnitude to present an unacceptable threat to human health or the environment when evaluated for future exposure conditions based on site-specific considerations; or

(D) new information indicates that the contamination at the facility or area was not sufficiently characterized such that an unacceptable threat to human health or the environment continues to exist.

(c) Notification and initiation requirements.

(1) A person who intends to perform any activity of closure or remediation in accordance with subsection (b) of this section shall determine the risk reduction standard(s) to be attained. The person shall notify the executive director and the commission's office in the district where the facility or area is located in writing of the following information at least 10 days prior to conducting the activity:

- (A) the facility or area to be subject to closure or remediation activities;
- (B) the risk reduction standard(s) to be attained; and
- (C) the estimated time necessary to complete the activity.

(2) After performing notification in accordance with paragraph (1) of this subsection, the person may initiate the actions necessary to attain Risk Reduction Standard Numbers 1 or 2 without prior approval by the executive director, unless such approval is required by other regulation, order or permit of the commission. Any plan submitted for prior approval by the executive director shall contain the information specified in §335.553(a) of this title (relating to Required Information).

(3) If the person intends to attain Risk Reduction Standard Number 3, or determines that Standard Numbers 1 or 2 has not been attained in a self-implemented action, the person shall submit to the executive director the information specified in §335.553(b) of this title (relating to Required Information) for approval prior to beginning, or continuing, as applicable, the closure or remediation activities.

(4) The person may include one or more waste management units or areas in a submittal for the purpose of responding to this subsection and subsection (d) of this section.

(5) Notwithstanding any other requirement, the person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether the closure or remediation is compliant with this section.

(d) Demonstration of conformance with risk reduction standards. Upon completion of a closure or remediation, the person shall demonstrate in a form acceptable to the executive director that the activity meets the intended risk reduction standards and any applicable closure criteria listed or referenced in this chapter. Any submittal to the executive director in response to this subsection shall be in the form of a plan or report that contains the information specified in §335.553 of this title (relating to Required Information).

#### **§335.9. Recordkeeping and Annual Reporting Procedures Applicable to Generators.**

(a) Except with regard to nonhazardous recyclable materials regulated pursuant to §335.24(h) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), each generator of hazardous waste or industrial solid waste shall comply with the following.

(1) The generator shall keep records of all hazardous waste and industrial solid waste activities regarding the quantities generated, stored, processed, and disposed of on-site or shipped off-site for storage, processing, or disposal and which, at a minimum, includes the information described in subparagraphs (A)-(G) of this paragraph. These records may be maintained in any format provided they are retrievable and easy to copy. The required records must be sufficiently detailed and complete to support any contentions or claims made by the generator with respect to:

(A) the description, character and classification of each waste, and any changes and additional information required under §335.6(c) and (d) of this title (relating to Notification Requirements);

(B) the quantity generated;

(C) except for conditionally exempt small quantity generators regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators), the quantity held in on-site storage as of December 31 of each calendar year;

(D) the quantity processed or disposed of at each on-site facility unit during the calendar year;

(E) the method of storage, processing, or disposal as described by codes listed on the form or instructions;

(F) the quantity shipped off-site for storage, processing, or disposal each calendar year, including the name, address and location of each off-site facility and transporter receiving shipments;

(G) the location of all hazardous waste accumulation areas, situated at or near any point of generation, where hazardous wastes under the control of the operator of the process generating the wastes are placed in containers and initially accumulated without a permit or interim status in accordance with §335.69(d) of this title (relating to Accumulation Time).

(2) The generator shall submit to the Texas Natural Resource Conservation Commission on or before January 25 of each year a complete and correct Annual Waste Summary detailing the management of each hazardous waste and Class 1 waste generated on site during the previous calendar year. The annual waste summary shall be submitted in a form provided or approved by the executive director. Upon written request by the generator, the executive director may authorize an extension to the report due date.

(3) Generators are not required to submit the information required in paragraph (1) of this subsection if they certify on the annual summary that all of the following conditions have been met:

(A) during the year, total on-site accumulation of hazardous waste did not equal or exceed 1,000 kilograms;

(B) no acute hazardous waste was generated or accumulated during the year exceeding the limits specified in §335.78(e)(1) and (2) of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators);

(C) a total of less than 1,200 kilograms of hazardous waste, and a total of less than 1,200 kilograms of Class 1 nonhazardous waste, ( 2,400 kilograms or less of hazardous waste plus Class 1 nonhazardous waste combined) was generated during the year.

(4) Generators who are regulated under §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated By Conditionally Exempt Small Quantity Generators) and also meet the requirements of paragraph (3) of this subsection are not required to submit an annual summary.

(b) A generator who ships his hazardous waste off-site must also include the information specified in §335.71 of this title (relating to Biennial Reporting). Any generator who stores, processes, or disposes of hazardous waste on-site shall also submit an annual report in accordance with the requirements of §335.114 of this title (relating to Reporting Requirements).

Adopted October 23, 1996

Effective November 20, 1996

**§335.10. Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.**

(a) Except as provided in subsection (g) of this section, no generator of hazardous or Class 1 waste consigned to an off-site solid waste process, storage, or disposal facility within the United States or primary exporters of hazardous waste consigned to a foreign country shall cause, suffer, allow, or permit the shipment of hazardous waste or Class 1 waste unless:

(1) for generators of industrial nonhazardous Class 1 waste in a quantity greater than 100 kilograms per month and/or generators of hazardous waste shipping hazardous waste which is part of a total quantity of hazardous waste generated in quantities greater than 100 kilograms in a calendar month, or quantities of acute hazardous waste in excess of quantities specified in §335.78(e) of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators), who consign that waste to an off-site solid waste storage, processing, or disposal facility in Texas; a Texas Natural Resource Conservation Commission (TNRCC) manifest on Form TNRCC-0311, and, if necessary, TNRCC-0311B is prepared;

(2) the generator is either an industrial generator that generates less than 100 kilograms of nonhazardous Class 1 waste per month and less than the quantity limits of hazardous waste specified in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) or a municipal generator that generates less than the quantity limit of hazardous waste specified in §335.78 of this title;

(3) for generators of hazardous waste or Class 1 waste generated in Texas for consignment to another state the consignment state's manifest, if provided, or a Texas state manifest if the consignment state does not provide a manifest, is prepared, unless the generator is identified in paragraph (2) of this section;

(4) for a primary exporter of hazardous waste for consignment to a foreign country the hazardous waste is accompanied by a manifest from the primary exporter's state if that state supplies the manifest form and requires its use or a manifest from any source if the primary exporter's state does not supply the manifest form; and

(5) a generator designates on the manifest one facility which is authorized to receive the waste described on the manifest. A generator may also designate one alternate facility which is authorized to receive the waste in the event an emergency prevents delivery of the waste to the primary designated facility. An alternate facility shall be identified on the manifest in the item marked "Special Handling Instructions and Additional Information." If the transporter is unable to deliver the waste to the designated facility or the



alternate facility, the generator must either designate another facility or instruct the transporter to return the waste.

(6) for shipments of hazardous waste to a designated facility in an authorized state which has not yet obtained authorization to regulate that particular waste as hazardous, the generator must assure that the designated facility agrees to sign and return the manifest to the generator, and that any out-of-state transporter signs and forwards the manifest to the designated facility.

(b) The manifest shall contain the following information.

(1) The manifest shall contain the generator's United States Environmental Protection Agency (EPA) 12-digit identification number and the unique five-digit number assigned to the manifest by the generator. This requirement does not apply if the waste being shipped is nonhazardous or if the generator is a conditionally exempt small quantity generator of hazardous waste.

(2) The manifest shall contain the total number of pages used to complete the manifest, plus the number of continuation sheets, if any (page 1 of \_\_\_\_).

(3) The manifest shall contain the name, mailing address, and telephone number of the generator.

(4) The manifest shall contain the telephone number where an authorized agent of the generator may be reached in the event of an emergency.

(5) The manifest shall contain the generator's Texas Natural Resource Conservation Commission (TNRCC) registration and/or permit number. Conditionally exempt small quantity generators (CESQGs) of hazardous waste or industrial generators of less than 100 kg per month of nonhazardous Class 1 waste and less than CESQG limits of hazardous waste that are exempt from manifesting may voluntarily choose to manifest their hazardous or Class 1 industrial nonhazardous waste. Such exempt generators may utilize the letters "CESQG" for their TNRCC generator registration number.

(6) The manifest shall contain the first transporter's company name.

(7) The manifest shall contain the first transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous or the transporter is a conditionally exempt small quantity generator transporting only his own hazardous waste.

(8) The manifest shall contain the first transporter's state registration number. Conditionally exempt small quantity generators who are not required to notify of their transportation activities as specified in §335.6(d) of this title (relating to Notification Requirements) may use the letters "CESQG" as the TNRCC transporter's registration number when transporting their own hazardous or Class 1 nonhazardous waste.

(9) The manifest shall contain a telephone number where an authorized agent of first transporter may be reached in the event of an emergency.

(10) The manifest shall contain the second transporter's company name.

(11) The manifest shall contain the second transporter's EPA 12-digit identification number. This requirement does not apply if the waste being shipped is nonhazardous.

(12) The manifest shall contain the second transporter's state registration number.

(13) The manifest shall contain a telephone number where an authorized agent of the second transporter may be reached in the event of an emergency.

(14) The manifest shall contain the company name and site address of the facility designated to receive the waste identified on the manifest and an alternate facility, if designated. Except as provided otherwise in §335.78 of this title (relating to Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators) for the shipment of hazardous wastes that are required to be manifested under subsection (a) of this section, generators shall designate on the manifest only those storage, processing, or disposal facilities which are authorized under the Resource Conservation and Recovery Act (RCRA) of 1976, Subtitle C, or an approved state hazardous waste program administered in lieu thereof.

(15) The manifest shall contain the designated facility's EPA 12-digit identification number; however, this requirement does not apply if the waste being shipped is nonhazardous.

(16) The manifest shall contain the Texas Natural Resource Conservation Commission's or Texas Department of Health's state storage, processing, or disposal facility registration and/or permit number.

(17) The manifest shall contain the appropriate notation in the hazardous materials (HM) column of the Texas uniform hazardous waste manifest. The form has been designed to allow the listing of both federally-regulated wastes and wastes regulated solely by the state. In order to distinguish between federally-regulated wastes and other waste, as required by United States Department of Transportation (DOT) regulations (49 Code of Federal Regulations §172.201(a)(1)), the Texas Natural Resource Conservation Commission has added a hazardous materials (HM) column on the manifest before the United States Department of Transportation description. When a waste shipment consists of both federally-regulated materials and state-regulated wastes, the hazardous materials (HM) column must be checked or marked for only those line entries which are regulated under federal law as hazardous wastes or hazardous materials.

(18) The manifest shall contain the United States Department of Transportation proper shipping name, hazard class, and identification number (UN/NA) for each hazardous waste as identified in 49 Code of Federal Regulations Parts 171-177. If the shipment contains nonhazardous waste solely regulated by the Texas Natural Resource Conservation Commission, then the Texas Natural Resource Conservation Commission waste classification code description should be used. If additional space is needed for waste descriptions, enter these additional descriptions in Item 28 on the continuation sheet.

(19) The manifest shall contain the number of containers for each waste and the appropriate abbreviation from Table 1 from §335.30 of this title (relating to Appendix I) for the type of container.

(20) The manifest shall contain the total quantity of each waste described on each line.

(21) The manifest shall contain the unit of measure of each waste described on each line. The appropriate abbreviation for the unit of measure may be found in Appendix I, Table 1 of 40 Code of Federal Regulations Parts 264 or 265.

(22) The manifest shall contain the Texas Natural Resource Conservation Commission waste classification code assigned to the waste by the generator.

(23) The manifest shall contain a certification by the generator stating:

"I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled, and are in all respects in proper condition for transport by highway according to applicable international and national government regulations, including applicable state regulations.

If I am a large quantity generator, I certify that I have a program in place to reduce the volume and toxicity of waste generated to the degree I have determined to be economically practicable and I have selected the practicable method of processing, storage, or disposal currently available to me which minimizes the present and future threat to human health and the environment; or, if I am a small quantity generator, I have made a good faith effort to minimize my waste generation and select the best waste management method that is available to me and that I can afford."

(24) If a mode other than highway is used, the word highway should be lined out and the appropriate mode (rail, water, or air) inserted in the space provided below the word highway. If another mode in addition to the highway mode is used, enter the appropriate additional mode (e.g., and rail) in the space provided below the word highway.

(c) The manifest shall consist of at least the number of copies which will provide the generator, each transporter, the owner or operator of the storage, processing, or disposal facility and in the case of hazardous waste exports, the United States customs official, with one copy each for their records and another copy to be returned to the generator.

(d) At the time of waste transfer, the generator shall:

(1) sign the manifest by hand;

(2) obtain the handwritten signature of the initial transporter and date of acceptance on the manifest;

(3) retain one copy, in accordance with §335.13(a) of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste); and

(4) give the transporter the remaining copies of the manifest.

(e) For shipments of hazardous waste or Class I waste within the United States solely by water (bulk shipments only), the generator shall send three copies of the manifest dated and signed in accordance with this section to the owner or operator of the designated facility or to the last water (bulk shipment) transporter to handle the waste in the United States if exported by water. Copies of the manifest are not required for each transporter.

(f) For rail shipments of hazardous waste or Class I waste within the United States which originate at the site of generation, the generator shall send at least three copies of the manifest dated and signed in accordance with this section to:

(1) the next non-rail transporter, if any;

(2) the designated facility if transported solely by rail; or

(3) the last rail transporter to handle the waste in the United States if exported by rail.

(g) No manifest is required for the shipment of Class I waste which is not hazardous waste to property owned or otherwise effectively controlled by the owner or operator of an industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, provided that the property is within 50 miles of the plant or operation and the waste is not commingled with waste from any other source or sources. An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants or operations owned by the same person.

Adopted February 7, 1996

Effective March 1, 1996

#### **§335.11. Shipping Requirements for Transporters of Hazardous Waste or Class I Waste.**

(a) No transporter may cause, suffer, allow, or permit the shipment of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary exporters of hazardous waste) to an off-site storage, processing, or disposal facility, unless the transporter:

(1) obtains a manifest completed by the generator or primary exporter where appropriate in accordance with §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste);

(2) upon receipt and prior to shipment, signs and dates the manifest acknowledging the acceptance of waste from the generator or primary exporter where appropriate;

(3) returns a signed copy to the generator or primary exporter where appropriate before leaving the generator's property; and

(4) in the case of hazardous waste exports, knows that the shipment conforms to the requirements set forth in the regulations contained in 40 Code of Federal Regulations §263.20(a) which are in effect as of August 8, 1986.

(b) The transporter shall ensure that the manifest accompanies the hazardous waste or Class I waste.

(c) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class I waste to another transporter designated on the manifest, unless the transporter:

(1) obtains the date of delivery and the handwritten signature of the accepting transporter on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste);

(3) gives the remaining copies of the manifest to the accepting transporter; and

(4) in the case of hazardous waste exports, ensures that a copy of the EPA acknowledgment of consent also accompanies the hazardous waste.

(d) No transporter may cause, suffer, allow, or permit the delivery of a shipment of hazardous waste or Class I waste to a storage, processing, or disposal facility, unless the transporter:

(1) obtains the date of delivery and the handwritten signature on the manifest, of the owner or operator of the facility designated on the manifest;

(2) retains one copy of the manifest in accordance with §335.14(a) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste); and

(3) gives the remaining copies of the manifest to the owner or operator of the facility designated on the manifest.

(e) The requirements of subsections (b)-(d) and (f) of this section do not apply to water (bulk shipment) transporters if:

(1) the waste is delivered by water (bulk shipment) to the facility designated on the manifest;

(2) a shipping paper containing all the information required on the manifest (excluding the identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste;

(3) the delivering transporter obtains the date of delivery and handwritten signature of the owner or operator of the facility on either the manifest or the shipping paper;

(4) the person delivering the waste to the initial water (bulk shipment) transporter obtains the date of delivery and the signature of the water (bulk shipment) transporter on the manifest and forwards it to the facility; and

(5) a copy of the shipping paper or manifest is retained by each water (bulk shipment) transporter in accordance with §335.14(b) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(f) For shipments involving rail transportation, the requirements of subsections (b)-(e) of this section do not apply and the following requirements do apply.

(1) When accepting Class I waste from a non-rail transporter, the initial rail transporter must:

(A) sign and date the manifest acknowledging acceptance of the waste;

(B) return a copy of the manifest to the non-rail transporter;

(C) forward at least three copies of the manifest to:

(i) the next non-rail transporter, if any;

(ii) the designated facility, if the shipment is delivered to that facility by rail; or

(iii) the last rail transporter designated to handle the waste in the United States;

(D) retain one copy of the manifest and rail shipping paper in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(2) Rail transporters must ensure that a shipping paper containing all the information required on the manifest (excluding the EPA identification numbers, generator certification, and signatures) and, for hazardous waste exports, an EPA acknowledgment of consent accompanies the waste at all times. Intermediate rail transporters are not required to sign either the manifest or shipping paper.

(3) When delivering Class I waste or hazardous waste to the designated facility, a rail transporter must:

(A) obtain the date of delivery and handwritten signature of the owner or operator of the designated facility on the manifest or shipping paper (if the manifest has not been received by the facility); and

(B) retain a copy of the manifest or signed shipping paper in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(4) When delivering hazardous waste or Class I waste to a non-rail transporter, a rail transporter must:

(A) obtain the date of delivery and the handwritten signature of the next non-rail transporter on the manifest; and

(B) retain a copy of the manifest in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste).

(5) Before accepting municipal hazardous waste or Class I waste from a rail transporter, a non-rail transporter must sign and date the manifest and provide a copy to the rail transporter.

(g) Transporters who transport hazardous waste or Class I waste out of the United States shall:

(1) indicate on the manifest the date the hazardous waste or Class I waste left the United States under the item labeled "Special Handling Instructions and Additional Information";

(2) sign the manifest and retain one copy in accordance with §335.14(c) of this title (relating to Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste);

(3) return a signed copy of the manifest to the generator or primary exporter where appropriate; and

(4) give a copy of the manifest to a United States customs official at the point of departure from the United States.

(h) The transporter must deliver the entire quantity of hazardous waste or Class I waste which he has accepted from a generator or a transporter to:

(1) the designated facility listed on the manifest;

(2) the alternate designated facility if the waste cannot be delivered to the designated facility because an emergency prevents delivery;

(3) the next designated transporter; or

(4) the place outside the United States designated by the generator.

(i) If the transporter cannot deliver the waste in accordance with subsection (h) of this section, the transporter must contact the generator for further directions and must revise the manifest according to the generator's instructions.

**§335.12. Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.**

(a) No owner or operator of a storage, processing, or disposal facility may accept delivery of solid waste for which a manifest is required under §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class I Waste and Primary Exporters of Hazardous Waste), for off-site storage, processing, or disposal unless:

(1) a manifest accompanies the shipment which designates that facility to receive the waste; and

(2) the owner or operator signs the manifest and immediately gives at least one copy of the signed manifest to the transporter; and

(3) retains one copy of the manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities);

(4) within 30 days after the delivery, sends a copy of the manifest to the generator or primary exporter where appropriate; and

(5) in the case of hazardous waste exports, a copy of the EPA acknowledgment of consent also accompanies the waste and the owner or operator has no knowledge that the shipment does not conform to the EPA acknowledgment of consent.

(b) If a facility receives, from a rail or water (bulk shipment) transporter, hazardous waste or Class I waste which is accompanied by a shipping paper containing all the information required on the manifest, the owner or operator, or his agent, shall:

(1) sign and date each copy of the manifest or shipping paper (if the manifest has not been received) to certify that the hazardous waste or Class I waste covered by the manifest or the shipping paper was received;

(2) immediately give the rail or water (bulk shipment) transporter at least one copy of the manifest or shipping paper (if the manifest has not been received);

(3) within 30 days after the delivery, send a copy of the signed and dated manifest to the generator; however, if the manifest has not been received within 30 days after delivery, the owner or operator, or his agent, must send a copy of the shipping paper signed and dated to the generator; and



(4) retain at the facility a copy of each shipping paper and manifest in accordance with §335.15(a) of this title (relating to Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(c) If a facility receives hazardous waste or Class I waste accompanied by a manifest, or in the case of shipments by rail or water (bulk shipment), by a shipping paper, the owner or operator, or his agent, must note any significant discrepancies on each copy of the manifest or shipping paper (if the manifest has not been received).

(1) Manifest discrepancies are differences between the quantity or type of hazardous waste or Class I waste designated on the manifest or shipping paper, and the quantity or type of hazardous waste or Class I waste a facility actually received. Significant discrepancies in type are obvious differences which can be discovered by inspection or waste analysis, such as waste solvent substituted for waste acid, or toxic constituents not reported in the manifest or shipping paper. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% in weight; and

(B) for batch waste, any variation in piece count, such as a discrepancy of one drum in a truckload.

(2) Upon discovering a significant discrepancy, the owner or operator must attempt to reconcile the discrepancy with the waste generator or transporter (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after receiving the waste, the owner or operator must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the manifest or shipping paper at issue. The commission does not intend that the owner or operator of a facility perform the general waste analysis required by 40 Code of Federal Regulations §264.13 or §265.13 before signing the manifest and giving it to the transporter. However, subsection (c) of this section does require reporting an unreconciled discrepancy discovered during later analysis.

**§335.13. Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste.**

(a) Unregistered generators who ship hazardous waste or Class 1 waste shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(b) Unregistered generators or out-of-state primary exporters who export hazardous waste from or through Texas to a foreign country, shall prepare a complete and correct Waste Shipment Summary (S1) from the manifests.

(c) Registered generators or out-of-state primary exporters who import hazardous or Class 1 waste from a foreign country through Texas to another state shall prepare a complete and correct Foreign Waste Shipment Summary (F1) from the manifests.

(d) The Waste Shipment Summary (S1) and the Foreign Waste Shipment Summary (F1) shall be prepared in a form provided or approved by the executive director and submitted to the executive director on

or before the 25th of each month for shipments originating during the previous month. The unregistered generator or in-state/out-of-state primary exporter must keep a copy of each summary for a period of at least three years from the due date of the summary. These generators are required to prepare and submit a Waste Shipment Summary (S1) and/or Foreign Waste Shipment Summary (F1) only for those months in which shipments are actually made. Conditionally exempt small quantity generators shipping municipal hazardous waste are not subject to the requirements of this subsection.

(e) The following figure is a graphic representation illustrating generator, waste type, shipment type, and report method. Figure 1: 30 TAC §335.13(e)

Generator Type	Waste Type	Shipment Type	Report Method
In-State Registered Generator	Texas Waste	Ship within Texas	Annual Waste Summary (G1)
		Ship out of Texas	Annual Waste Summary (G1)
In-State Unregistered Generator	Texas Waste	Ship within Texas	Waste Shipment Summary (S1)
		Ship out of Texas	Waste Shipment Summary (S1)
In-State Registered Primary Exporter/Importer (TX EPA#)	Maquiladora or Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	Annual Waste Summary (G1)
In-State Unregistered Primary Exporter/Importer (TX EPA#)	Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
Out-of-State Primary Exporter/Importer (Other State EPA #)	Maquiladora or Foreign Waste (Import)	Ship through Texas	Foreign Waste Shipment Summary (F1)
		Ship into Texas	No Report Required
	Other State's Haz. Waste Exported to Foreign Country	Ship through Texas	Waste Shipment Summary (S1)

(f) A registered generator is defined as:

(1) an in-state generator who has complied with §335.6 of this title (relating to Notification Requirements), and is assigned a solid waste registration number; or

(2) a Texas parent or a Texas sister company of a twin plant (maquiladora) who imports hazardous waste or Class 1 waste from a foreign country into or through Texas.

(g) An unregistered generator is defined as an in-state generator who is not a conditionally exempt small quantity generator, as defined in §335.78 of this title (relating to Special Requirements for Hazardous

Waste Generated by Conditionally Exempt Small Quantity Generators), that ships hazardous waste and/or Class 1 waste using a temporary solid waste registration number and a temporary Texas waste code number assigned by the executive director.

(h) A primary exporter/importer is defined as:

(1) an in-state generator who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste to a foreign country; or

(2) an out-of-state generator/importer of record who imports hazardous waste or Class 1 waste from a foreign country into or through Texas to another state and/or exports hazardous waste through Texas to a foreign country.

(i) The registered/unregistered generator or primary exporter shall retain a copy of each manifest required by §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste) for a minimum of three years from the date of shipment by the registered/unregistered generator or primary exporter.

(j) A registered/unregistered generator who does not receive a copy of the manifest with the handwritten signature of the owner or operator of the designated facility within 35 days of the date the waste was accepted by the initial transporter must contact the transporter and/or the owner or operator of the designated facility to determine the status of the hazardous waste or Class 1 waste.

(k) A registered/unregistered generator or primary exporter of hazardous waste subject to §335.76(c) of this title (relating to Additional Requirements Applicable to International Shipments) must submit an exception report to the executive director if he has not received a copy of the manifest with the handwritten signatures of the owner or operator of the designated facility within 45 days of the date that the waste was accepted by the initial transporter. The exception report must be retained by the registered/unregistered generator or primary exporter for at least three years from the date the waste was accepted by the initial transporter and must include:

(1) a legible copy of the manifest for which the generator does not have confirmation of delivery; and

(2) a copy of a letter signed by the generator or his authorized representative explaining the efforts taken to locate the hazardous waste or Class 1 waste and the results of those efforts.

(l) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(m) The requirements of subsections (j) and (k) of this section do not apply to generators who generate hazardous waste or Class 1 waste in quantities less than 100 kilograms in a calendar month, or acute hazardous waste in quantities specified in §335.78 of this title.

(n) Primary exporters of hazardous waste as defined in 40 Code of Federal Regulations (CFR), §262.51 must submit an annual report in accordance with the requirements set out in the regulations contained in 40 CFR, §262.56, which are in effect as of November 8, 1986.

Adopted May 14, 1997

Effective June 4, 1997

**§335.14. Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class I Waste.**

(a) A transporter of hazardous waste or Class I waste shall retain a copy of each manifest signed by the generator, or, in the case of exports of hazardous waste, the primary exporter; the transporter; and the next designated transporter, or the owner or operator of the facility designated on the manifest for a minimum of at least three years from the date of initial shipment.

(b) For shipments delivered to the facility designated on the manifest by water (bulk shipment), each water (bulk shipment) transporter must retain a copy of a shipping paper containing all the information required by §335.11(e) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a minimum of three years from the date of initial shipment.

(c) For shipments of hazardous waste or Class I waste by rail within the United States:

(1) the initial rail transporter must keep a copy of the manifest and shipping paper with all of the information required in §335.11(f)(2) of this title (relating to Shipping Requirements for Transporters of Hazardous Waste or Class I Waste) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter; and

(2) the final rail transporter must keep a copy of the signed manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste or Class I waste was accepted by the initial transporter.

(d) A transporter who transports waste out of the United States must retain a copy of the manifest indicating that the hazardous waste or waste left the United States for a minimum of three years from the date of initial shipment.

(e) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

**§335.15. Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities.**

This section applies to owners and operators that receive hazardous waste or Class 1 waste from off-site sources or have notified that they intend to receive hazardous waste or Class 1 waste from off-site sources.

(1) The owner or operator of the storage, processing, or disposal facility designated on the manifest shall retain a copy of each manifest or, in the case of shipments by rail or water (bulk shipment), a copy of each manifest and shipping paper, for a minimum of three years from the date of initial shipment by the generator or primary exporter where appropriate.

(2) Except as provided in paragraph (6) of this section, the owner or operator shall prepare a complete and correct monthly waste receipt summary for all hazardous waste or Class 1 waste shipments received. The monthly waste receipt summary shall be prepared in a form provided or approved by the executive director and submitted to the Texas Natural Resource Conservation Commission on or before the 25th of each month for wastes or manifests received during the previous month. (The appropriate abbreviations for method of storage, processing, and disposal of waste and for units of measure may be found on the form or accompanying instructions.) An owner or operator of a storage, processing, or disposal facility required to comply with this subsection shall prepare and submit a monthly waste receipt summary in each month even if no waste was received.

(3) The owner or operator shall submit a report on forms provided or approved by the executive director summarizing the types and volumes of any hazardous waste or Class 1 waste received without manifests, or, in the case of shipments by rail or water (bulk shipments), without shipping papers. This report shall be submitted within 15 days of receiving the waste, regardless of quantity, and shall include the following information:

(A) the EPA identification number (applicable to hazardous waste only), name, and address of the facility;

(B) the date the facility received the waste;

(C) the EPA identification number (applicable to hazardous waste only), name, and address of the generator and the transporter, if available;

(D) a description and the quantity of each hazardous waste or Class 1 waste the facility received which was not accompanied by a manifest;

(E) the method of storage, processing, or disposal for each hazardous waste or Class 1 waste;

(F) the certification signed by the owner or operator of the facility or his authorized representative; and

(G) a brief explanation of why the waste was unaccompanied by a manifest, if known.

(4) The owner or operator shall retain a copy of each summary required by paragraphs (2) and (3) of this subsection for a minimum of three years from the date of each summary.

(5) The periods of record retention required by this section are automatically extended during the course of any unresolved enforcement action regarding the regulated activity.

(6) An owner or operator reclaiming hazardous wastes received from conditionally exempt small quantity generators is subject to the requirements of this section requiring completion of a monthly waste receipt summary, from his copy of all manifests received during the month, unless he has requested in writing a modification in the reporting requirements. A modification relieving the owner or operator of having to report each manifested shipment on the monthly waste receipt summary may be granted at the discretion of the executive director on a case-by-case basis.

Adopted October 23, 1996

Effective November 20, 1996

**§335.17. Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials.**

For the purposes of the definition of solid waste in §335.1 of this title (relating to Definitions) and §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials):

(1) A spent material is any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.

(2) Sludge has the same meaning used in the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2.

(3) A by-product is a material that is not one of the primary products of a production process and is not solely or separately produced by the production process. Examples are process residues such as slags or distillation column bottoms. The term does not include a co-product that is produced for the general public's use and is ordinarily used in the form in which it is produced by the process.

(4) A material is reclaimed if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents.

(5) A material is used or reused if it is either:

(A) employed as an ingredient (including use as an intermediate) in an industrial process to make a product (for example, distillation bottoms from one process used as feedstock in another process). However, a material will not satisfy this condition if distinct components of the material are recovered as separate end products (as when metals are recovered from metal-containing secondary materials); or

(B) employed in a particular function or application as an effective substitute for a commercial product (for example, spent pickle liquor used as phosphorous precipitant and sludge conditioner in wastewater treatment).

(6) Scrap metal is bits and pieces of metal parts (e.g., bars, turnings, rods, sheets, wires) or metal pieces that may be combined together with bolts or soldering (e.g., radiators, scrap automobiles, railroad box cars), which when worn or superfluous can be recycled.

(7) A material is recycled if it is used, reused, or reclaimed.

(8) A material is accumulated speculatively if it is accumulated before being recycled. A material is not accumulated speculatively, however, if the person accumulating it can show that the material is potentially recyclable and has a feasible means of being recycled; and that, during the calendar year (commencing on January 1), the amount of material that is recycled, or transferred to a different site for recycling, equals at least 75% by weight or volume of the amount of that material accumulated at the beginning of the period. In calculating the percentage of turnover, the 75% requirement is to be applied to each material of the same type (e.g., slags from a single smelting process) that is recycled in the same way (i.e., from which the same material is recovered or that is used in the same way). Materials accumulating in units that would be exempt from regulation under 40 Code of Federal Regulations §261.4(c) are not to be included in making the calculation. (Materials that are already defined as solid wastes also are not to be included in making the calculation.) Materials are no longer in this category once they are removed from accumulation for recycling, however.

#### **§335.18. Variances from Classification as a Solid Waste.**

In accordance with the standards and criteria in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that the following recyclable materials and nonhazardous recyclable materials are not solid wastes:

(1) materials that are accumulated speculatively without sufficient amounts being recycled (as defined in §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials));

(2) materials that are reclaimed and then reused within the original production process in which they were generated; or

(3) materials that have been reclaimed but must be reclaimed further before the materials are completely recovered.

Adopted February 7, 1996

Effective March 1, 1996

#### **§335.19. Standards and Criteria for Variances from Classification as a Solid Waste.**

(a) The executive director may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an

annual basis, by filing a new application. The executive director's decision will be based on the following standards and criteria:

(1) the manner in which the material is expected to be recycled, when the material is expected to be recycled, and whether this expected disposition is likely to occur (for example, because of past practice, market factors, the nature of the material, or contractual arrangements for recycling);

(2) the reason that the applicant has accumulated the material for one or more years without recycling 75% of the weight or volume accumulated at the beginning of the year;

(3) the quantity of material already accumulated and the quantity expected to be generated and accumulated before the material is recycled;

(4) the extent to which the material is handled to minimize loss;

(5) other relevant factors.

(b) The executive director may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on the following criteria:

(1) how economically viable the production process would be if it were to use virgin materials, rather than reclaimed materials;

(2) the prevalence of the practice on an industry-wide basis;

(3) the extent to which the material is handled before reclamation to minimize loss;

(4) the time periods between generating the material and its reclamation, and between reclamation and return to the original primary production process;

(5) the location of the reclamation operation in relation to the production process;

(6) whether the reclaimed material is used for the purpose for which it was originally produced when it is returned to the original process, and whether it is returned to the process in substantially its original form;

(7) whether the person who generates the material also reclaims it;

(8) other relevant factors.

(c) The executive director may grant requests for a variance from classifying as a solid waste those materials that have been reclaimed but must be reclaimed further before recovery is completed if, after initial



reclamation, the resulting material is commodity-like (even though it is not yet a commercial product, and has to be reclaimed further). This determination will be based on the following factors:

- (1) the degree of processing the material has undergone and the degree of further processing that is required;
- (2) the value of the material after it has been reclaimed;
- (3) the degree to which the reclaimed material is like an analogous raw material;
- (4) the extent to which an end market for the reclaimed material is guaranteed;
- (5) the extent to which the reclaimed material is handled to minimize loss;
- (6) other relevant factors.

Adopted February 7, 1996

Effective March 1, 1996

**§335.20. Variance to be Classified as a Boiler.**

In accordance with the standards and criteria in §335.1 of this title (relating to Definitions) (definition of boiler), and the procedures in §335.21 of this title (relating to Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler), the executive director may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in §335.1 of this title (relating to Definitions), after considering the following criteria:

- (1) the extent to which the unit has provisions for recovering and exporting thermal energy in the form of steam, heated fluids, or heated gases;
- (2) the extent to which the combustion chamber and energy recovery equipment are of integral design;
- (3) the efficiency of energy recovery, calculated in terms of the recovered energy compared with the thermal value of the fuel;
- (4) the extent to which exported energy is utilized;
- (5) the extent to which the device is in common and customary use as a boiler functioning primarily to produce steam, heated fluids, or heated gases; and
- (6) other factors, as appropriate.

**§335.21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.**

The executive director will use the following procedures in evaluating applications for variances from classification as a solid waste or applications to classify particular enclosed flame combustion devices as boilers:

(1) The application must address the relevant criteria contained in §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste) and §335.20 of this title (relating to Variance to be Classified as a Boiler).

(2) The executive director will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement and radio broadcast in the locality where the recycler is located. The executive director will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The executive director will issue a final decision after receipt of comments and after the hearing (if any). Any person affected by a final decision of the executive director may petition the commission to review the decision. Any person affected by the final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 273 of this title (relating to Procedures After Final Decision) and the Texas Administrative Procedure and Texas Register Act, Article 6252-13a.

**§335.22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-By-Case Basis.**

The commission may decide on a case-by-case basis that persons accumulating or storing the recyclable materials described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) should be regulated under §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials). The basis for this decision is that the materials are being accumulated or stored in a manner that does not protect human health and the environment because the materials or their toxic constituents have not been adequately contained, or because the materials being accumulated or stored together are incompatible. The procedures for this decision are set forth in §335.23 of this title (relating to Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities). In making this decision, the commission will consider the following factors:

- (1) the types of materials accumulated or stored and the amounts accumulated or stored;
- (2) the method of accumulation or storage;
- (3) the length of time the materials have been accumulated or stored before being reclaimed;
- (4) whether any contaminants are being released into the environment, or are likely to be so released; and

(5) other relevant factors.

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**§335.23. Procedures for Case-By-Case Regulation of Hazardous Waste Recycling Activities.**

The commission will use the following procedures when determining whether to regulate hazardous waste recycling activities described in §335.24(b)(3) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) under the provisions of §335.24(d)-(f) of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), rather than under the provisions governing Recyclable Materials Utilized for Precious Metal Recovery under Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities).

(1) If a generator is accumulating the waste, the commission will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste). The notice will become final within 30 days, unless the person served requests a public hearing to challenge the decision. Upon receiving such a request, the commission will hold a public hearing. The commission will provide notice of the hearing to the public and allow public participation at the hearing. The commission will issue a final order after the hearing stating whether or not compliance with Subchapters A-C of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste Management in General; Hazardous Waste Management General Provisions; and Standards Applicable to Generators of Hazardous Waste) is required. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable, in accordance with Chapter 80 of this title (relating to Contested Case Hearings) and the Texas Administrative Procedure Act, Texas Government Code Chapter 2001.

(2) If the person is accumulating the recyclable material at a storage facility, the notice will state that the person must obtain a permit in accordance with all applicable provisions of Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings). The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the commission's decision, he may do so in his permit application, in a public hearing held on the draft permit, or in comments filed on the draft permit or on the notice of intent to deny the permit. The proposal for decision accompanying the permit will include the reasons for the commission's determination. The question of whether the commission's decision was proper will remain open for consideration during the public comment period and in any subsequent hearing.

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**§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.**

(a) Hazardous wastes that are recycled are subject to the requirements for generators, transporters, and storage facilities of subsections (d)-(f) of this section, except for the materials listed in subsections (b) and (c) of this section. Hazardous wastes that are recycled will be known as "recyclable materials." Non-hazardous industrial wastes that are recycled will be known as "non-hazardous recyclable materials." Non-hazardous recyclable materials are subject to the requirements of subsections (h) and (i) of this section.

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings):

(1) recyclable materials used in a manner constituting disposal;

(2) hazardous wastes burned for energy recovery in boilers and industrial furnaces that are not regulated under Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities) or Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities);

(3) recyclable materials from which precious metals are reclaimed;

(4) spent lead-acid batteries that are being reclaimed.

(c) The following recyclable materials are not subject to regulation under Subchapters B-I and O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions) or Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 80 of this title (relating to Contested Case Hearings); and Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) industrial ethyl alcohol that is reclaimed except that, unless provided otherwise in an international agreement as specified in the regulations contained in 40 Code of Federal Regulations (CFR) §262.58, which are in effect as of November 8, 1986:

(A) a person initiating a shipment for reclamation in a foreign country, and any intermediary arranging for the shipment, must comply with the requirements applicable to a primary exporter in the regulations contained in 40 CFR §§262.53, 262.56(a)(1)-(4) and (6) and (b), and 262.57, which are in effect as of November 8, 1986, export such materials only upon such consent of the receiving country and in conformance with the EPA acknowledgment of consent as defined in the regulations contained in 40 CFR Part 262, Subpart E, which are in effect as of November 8, 1986, and provide a copy of the EPA acknowledgment of consent to the shipper transporting the shipment for export;

(B) shippers transporting a shipment for export may not accept a shipment if he knows the shipment does not conform to the EPA acknowledgment of consent, must ensure that a copy of the EPA acknowledgment of consent accompanies the shipment and must ensure that it is delivered to the facility designated by the person initiating the shipment;

(2) used batteries (or used battery cells) returned to a battery manufacturer for regeneration;

(3) scrap metal;

(4) fuels produced from the refining of oil-bearing hazardous wastes along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices;

(5) oil reclaimed from hazardous waste resulting from normal petroleum refining, production, and transportation practices, which oil is to be refined along with normal process streams at a petroleum refining facility;

(6) the following hazardous waste fuels:

(A) hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a

refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11; and

(7) petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C.

(d) Generators and transporters of recyclable materials are subject to the applicable requirements of Subchapter C of this chapter (relating to Standards Applicable to Generators of Hazardous Waste) and Subchapter D of this chapter (relating to Standards Applicable to Transporters of Hazardous Waste), and the notification requirements of §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section.

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits) and Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); and Chapter 80 of this title (relating to Contested Case Hearings), and the notification requirements under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from registration.

(f) Owners or operators of facilities that recycle recyclable materials without storing them before they are recycled are subject to the following requirements, except as provided in subsections (a)-(c) of this section:

(1) notification requirements under §335.6 of this title (relating to Notification Requirements);

(2) section 335.12 of this title (relating to Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities).

(g) Except as provided in subsection (h) of this section, recyclable materials (excluding those listed in subsection (c)(1) and (3)-(7) of this section) remain subject to the requirements of §§335.4, 335.6, and 335.9 - 335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable.

(h) Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) and (3) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions) and §335.6 of this title (relating to Notification Requirements). Such wastes may also be subject to the requirements of §§335.10 - 335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) Except as provided in the Solid Waste Disposal Act, Health and Safety Code §361.090, facilities managing recyclable materials that are required to obtain a permit under this section may also be permitted to manage nonhazardous recyclable materials at the same facility if the executive director determines that such regulation is necessary to protect human health and the environment. In making this determination, the executive director shall consider the following criteria:

(1) whether managing non-hazardous recyclable materials will create an additional risk of release of the hazardous recyclable materials into the environment;

(2) whether hazardous and non-hazardous wastes that are incompatible are stored and/or processed in the same or connected units;

(3) whether the management of recyclable materials and non-hazardous recyclable materials is segregated within the facility;

(4) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(5) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(6) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(7) the potential for the objectionable constituent to degrade into nonharmful constituents;

(8) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(9) the plausible types of improper management to which the waste could be subjected;

(10) the nature and severity of potential damage to the public health and environment;

(11) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(12) other relevant factors.

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**§335.28. Adoption of Memoranda of Understanding by Reference.**

The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P. O. Box 13087, Austin, Texas 78711-3087, (512) 463-8078.

(1) the memorandum of understanding (effective July 14, 1987) between the Attorney General of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process;

(2) the memorandum of understanding (effective September 1, 1987) between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of radioactive mixed wastes; and



(3) the memorandum of understanding (effective December 1, 1987) between the Railroad Commission of Texas, the Texas Department of Health and the Texas Water Commission, which concerns the division of jurisdiction among the agencies over wastes that result from or are related to activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil.

**§335.29. Adoption of Appendices by Reference.**

The following appendices contained in 40 Code of Federal Regulations Part 261 are adopted by reference as amended and adopted through April 1, 1987, and as further amended as indicated in each paragraph:

- (1) Appendix I - Representative Sampling Methods;
- (2) Appendix II--Method 1311 Toxicity Characteristic Leaching Procedure (TCLP) (as amended through August 31, 1993, at 58 FedReg 46040);
- (3) Appendix III--Chemical Analysis Test Methods (as amended through August 31, 1993, at 58 FedReg 46040);
- (4) Appendix VII - Basis for Listing Hazardous Waste (as amended through October 15, 1992, at 57 FedReg 47376);
- (5) Appendix VIII--Hazardous Constituents (as amended through June 20, 1994, at 59 FedReg 31551); and
- (6) Appendix IX--Wastes Excluded Under §260.20 and §260.22.

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**§335.30. Appendix I.**

The following appendix will be used for the purposes of Subchapter A of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General).

**Table 1**  
**Types of Containers**

DM	=	Metal drums, barrels, kegs
DW	=	Wooden drums, barrels, kegs
DF	=	Fiberboard or plastic drums, barrels, kegs
TP	=	Tanks portable
TT	=	Cargo tanks (tank trucks)
TC	=	Tank cars

DT	=	Dump truck
CY	=	Cylinders
CM	=	Metal boxes, cartons, cases (including roll-offs)
CW	=	Wooden boxes, cartons, cases
CF	=	Fiber or plastic boxes, cartons, cases
BA	=	Burlap, cloth, paper or plastic bag

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**§335.31. Incorporation of References.**

When used in Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste), the references contained in 40 Code of Federal Regulations §260.11 are incorporated by reference as amended and adopted in the Code of Federal Regulations through June 2, 1994, at 59 FedReg 28484.

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